U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30627895

Date: APR. 25, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an entrepreneur in human resources, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish she merits a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner proposes to establish a human resources consulting business in the United States having previously worked in human resources in Brazil.

The Director's decision did not indicate whether the Petitioner established her eligibility for the underlying EB-2 immigrant classification. Upon de novo review, the record shows that the Petitioner is eligible for the underlying classification as an advanced degree professional.[3]

The issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of the classification's job offer requirement. The Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that although the Petitioner established that she is well positioned to undertake the endeavor under *Dhanasar's* second prong, she did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining national importance, the relevant question is not the importance

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma, her academic transcript, an academic evaluation, and letters of employment and recommendation. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889.

The Petitioner proposes to establish a human resources consulting business in Florida. As explained in the business plan, the Petitioner and her husband incorporated the business in Florida with plans for its main office to be in a historically underutilized business community with plans for future offices in New York and California. The business would focus on reducing operational costs for companies through increased employee retention and engagement. To do this, the business would help companies monitor and improve their employee career development, wellness, productivity, experience, management engagement, and work culture. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor has the potential to extend beyond her business and its clients to impact the field more broadly. The Director further found that the Petitioner did not demonstrate her endeavor has significant potential to employ U.S. workers or offer substantial positive economic effects. Therefore, the Director determined that the Petitioner did not demonstrate that her endeavor is of national importance and did not meet the first prong of the Dhanasar framework. Upon de novo review, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the Director "did not apply the proper standard of proof . . ., instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; the business plan describing her credentials and the projected benefits she offers the United States; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in her field.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner stresses on appeal her eighteen years of professional experience and her educational credentials to argue that "[h]er qualifications and experience have given her a unique perspective in the field of recruitments, which has allowed her the opportunity to recognize the traits that make up successful and unsuccessful businesses due to their employees." She maintains that her "professional record mirrors how her proposed work offers innovations and improvements of broad implications on the United States." However, the Petitioner's reliance on her academic credentials and professional experience to establish the national importance of her proposed endeavor is misplaced. Her academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N

Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Id. at 889.

In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact the field more broadly. Id. at 893. Similarly, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of human resources, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's human resources consulting business would impact the field more broadly.

The Petitioner then argues that her proposed endeavor has national importance, particularly because it will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States" and would be "a vital aspect of U.S. companies' operations and sales, and business functions of U.S. companies." She maintains that her endeavor would contribute "to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." Her business will have broader implications by helping companies with their financial gains which will "help the [United States] stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy." She maintains that her business' services will extend beyond her business because she will provide "services in a very niche field of which not many have the knowledge and expertise." With her "strategic approach to business and sales", she maintains that her business would provide companies "with the proper tools and resources to improve wages, working conditions, and workforce productivity. This will translate to an increase in national business productivity, which will offer substantial benefits to the U.S. economy." The Petitioner asserts "her proposed endeavor . . . is of national importance, when considered with respect to the extent that a professional of her level of expertise can contribute to the improvement of nation-wide concerns, regardless of a labor certification."

The Petitioner argues that her business plan "describes her detailed plan for creating jobs through managing and developing her business in the [United States] through her unique expertise and skills." As owner, she maintains her "firm will support human resources processes in U.S. corporations with special attention to retention and engagement." (emphasis omitted). She explains that she would recruit, interview, hire, and train staff and personnel. In addition, she would collaborate "with executive leadership to define the organization's long-term mission and goals" in order to provide "guidance and leadership to the human management team." Her brief details the business' human resources services stressing it "will be focused on small and medium sized companies . . . ."

The record includes the Petitioner's statement and a business plan which indicate her proposed endeavor has national importance based on potential economic benefits to underutilized business areas of Florida and to the United States. The Petitioner states her business would generate jobs for U.S. workers in these underutilized areas, improve wages and working conditions for U.S. workers, help the local community attract investments to the region, and encourage economic development. The Petitioner asserts that her entrepreneurial endeavor is particularly important given its role in the U.S.

recovery from the COVID-19 pandemic. The business plan also explains the Petitioner's experience and investment in the business; its intended location and expansion plans; market overview of the human resources industry; benefits of human resources industry for U.S. businesses; the business' services of retention planning and management consultancy, recruitment, and career advice and engagement monitoring; and the business' projected marketing strategy, staffing, and financial calculations.

However, the Petitioner has not sufficiently documented the potential prospective impact, including the asserted economic benefits to the United States and the areas it intends to serve. The growth and importance of an industry is not sufficient to meet the national importance requirement under the Dhanasar framework. The Petitioner has not provided corroborating independent and objective evidence to support her claims that her business' activities stand to provide substantial economic benefits to the underutilized Florida business communities or the United States. Statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as the owner of her human resources consulting business would impact the human resources field more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

For instance, the business plan projects that in five years the business will hire 76 direct employees, pay wages of just over $14.5 million, and pay over $2.3 million in taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to the United States and the communities in the states it will serve. While the Petitioner expresses her desire to contribute to the United States and its underutilized business areas, she has not established with specific, probative evidence that her endeavor has the potential to have broader implications in her field, significant potential to employ U.S. workers, or other substantial positive economic effects in an economically underutilized business areas of Florida or the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 76 direct jobs, paying wages of just over $14.5 million, and paying over $2.3 million in taxes over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. She asserts that the articles show the importance of "business development professionals" and their role "in every type of business." She maintains that the articles show her proposed endeavor's importance based on "its economic implications – which very much affect nation-wide activities and business productivity." She claims her endeavor will impact nationally important matters and the national economy by helping small and medium sized U.S. companies succeed, driving economic advantage through innovation, and stimulating the job market through job creation. However, the Petitioner's arguments relate to "business development professionals," instead of the Petitioner's proposed endeavor of establishing a human resources services business.

The record does include industry reports and articles that relate to becoming a top executive, global human capital trends, benefits of human resources industry, workforce strategies of successful businesses, employee well-being and engagement following COVID-19 pandemic, transformation of human resources field, entrepreneur statistics, economic benefits of immigrant entrepreneurs, immigration reform, and the economic benefits of immigrants and entrepreneurship. We recognize the importance of the human resources field and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the human resources field or starting a human resources consulting business is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

Based on the above, the Petitioner has not demonstrated that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner of her proposed human resources consulting business offers the claimed innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed human resources consulting work and the claimed potential economic benefits.

III. CONCLUSION

Because the Petitioner does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.